

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RAYMOND ERIC ZAHLER,

Plaintiff,

vs.

MICHAEL MCCARTHY, DAVID  
SOUKUP, GLEN WARREN, KEN  
IRWIN, HAL WILSON and IMELDA  
BORROMEO,

## Defendants.

NO. CV-09-135-JPH

ORDER ADOPTING REPORT AND  
RECOMMENDATION, DISMISSING FIRST  
AMENDED COMPLAINT IN PART WITH  
PREJUDICE AND IN PART WITHOUT  
PREJUDICE

1915 (g)

Magistrate Judge Hutton filed a Report and Recommendation on August 25, 2009, recommending Mr. Zahler's First Amended Complaint be dismissed in part with prejudice and in part without prejudice. There being no objections, the court **ADOPTS** the Report and Recommendation. The First Amended Complaint is **DISMISSED in part with prejudice** for failure to state a claim upon which relief may be granted in federal district court under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), but **DISMISSED in part without** to Plaintiff seeking appropriate remedies in the state courts regarding his criminal proceedings.

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals that are dismissed as frivolous or for failure to state a claim will be precluded from

1 bringing any other civil action or appeal *in forma pauperis* "unless the  
2 prisoner is under imminent danger of serious physical injury." 28  
3 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory**  
4 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's**  
5 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**  
6 **§ 1915(g) and may adversely affect his ability to file future claims.**

7 **IT IS SO ORDERED.** The District Court Executive is directed to  
8 enter this Order, forward a copy to Plaintiff at his last known address,  
9 enter judgment, and close the file. The District Court Executive is  
10 further directed to forward a copy of this Order to the Office of the  
11 Attorney General of Washington, Criminal Justice Division.

12 The court certifies any appeal of this dismissal would not be taken  
13 in good faith.

14 **DATED** this 23<sup>rd</sup> day of October 2009.

16 S/ Edward F. Shea  
17 EDWARD F. SHEA  
18 UNITED STATES DISTRICT JUDGE

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27 ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING FIRST AMENDED  
28 COMPLAINT IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE -- 2